IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RSA No.365 of 1995

Date of Decision : 8.10.2007

HPSEB & another …Appellants

Versus:

Sharma Spray Works & others …Respondents

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellants : Ms. Devyani Sharma, Advocate.

For the respondents : Mr. Surinder Sharma, Advocate

Sanjay Karol, J. (oral)

The present appeal arises out of the judgment and decree dated 25.9.1995 passed by the Addl. District Judge, Shimla in Civil Appeal No. 102-S/13 of 1994 titled as Sharma Spray Works & another v. HPSEB & others, reversing the judgment and decree dated 21.9.1994 passed by the Sub Judge Ist Class(4), Shimla in Civil Suit No. 120-1 of 1993. The Ist Appellate Court has decreed the plaintiffs suit for a sum of Rs.9,583/-. The decreetal amount stands paid to the plaintiffs by the defendants in terms of order dated 12.7.1996 of this Court.

---

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

The present appeal was admitted on the following substantial questions of law:-

"1. Whether the learned lower Appellate Court was right in decreeing the suit of the plaintiffs-respondents No. 1 and 2 even when there was not an iota of evidence on record to prove that the appellant Board had in any manner placed an order with the plaintiffs for the repairs and painting of the vehicle HIR No. 12 in October 1990?

2. Whether the suit could have been decreed against the appellants when it had been proved on record that the appellant Board being a statutory body always places orders in writing to the workshops for repair of its vehicles and further that the orders were placed only after calling for quotations from 3 to 4 workshops?

3. Whether the impugned judgment and decree could have been passed in view of the oral and documentary evidence brought on record particularly the statements of DW-1 and DW-2?

4. Whether the learned lower Appellate Court could have decreed the suit even when the procedure of placing orders for repairs in writing by he appellants had been admitted by the PWs and moreso when PW-1 had categorically stated that no such orders in writing had been placed in the present case?"

For the sake of convenience, the appellants and respondent No.3 are referred to as 'the defendants' and the respondents No. 1 & 2 are referred to as 'the plaintiffs'.

The plaintiffs filed a suit for recovery of Rs.9,853-/- against the defendants for the work, which was carried out by them in relation to the repair of vehicle No. HIR-12 belonging to defendant No.2 who is the functionary of defendant No.1. The defendants contested the suit and the trial Court framed the following issues:-

"1) Whether the plaintiff is entitled to amount claimed? …OPP

2. Whether the suit is not maintainable in the present form? …OPD

3. Whether the suit is bad for mis-joinder of parties ? …OPD

4. Relief."

After examining the statements of the witnesses as also the other material on record, the trial Court dismissed the suit of the plaintiffs on the ground that the plaintiffs had failed to prove any written order for getting the vehicle repaired.

In an appeal filed against the said judgment and decree dated 21.9.1994, the first Appellate Court after examining the evidence led by the plaintiff himself as PW-1, Shri Ram Swarup (PW-2) who is the driver of defendant No.1, Shri Gita Ram (PW-3) employee of the defendant, Shri Chander Kumar (PW-4) Executive Engineer of defendant No.1 and the defendants witnesses Shri Parkash Chand (DW-1) JE and Shri

Chander Kumar (DW-2), both officials of defendant No.1, came to the conclusion that the defendants had entrusted the vehicle to the plaintiffs for getting the vehicle repaired. The first Appellate Court consequently allowed the appeal filed by the plaintiffs and decreed the suit as prayed for.

The learned counsel for the appellants has vehemently argued that in the plaint the plaintiffs had mentioned the name of Shri Gita Ram who had handed over the vehicle to the plaintiffs for carrying out the repair whereas in the evidence, the stand was changed to the effect that Shri Ram Swarup had got the vehicle for repair. She has further contended that there is nothing on record to prove that the defendants had placed any written order at the time of getting the work executed from the plaintiffs.

I have perused the entire evidence on record and have seen no reason to differ with the findings and conclusions rendered by the first Appellate Court.

PW-2 has categorically stated that he had brought the vehicle in the year 1990 for repair to the workshop of the plaintiffs. PW-1, PW-2 and PW-3 have proved that the vehicle in question was actually repaired by the plaintiffs. No doubt, PW-3 has stated that no written orders were placed for getting the vehicle repaired but, however, he has admitted that it was he who got the vehicle back from the workshop alongwith bill Ext.PW-1/A after the repair was carried out by the plaintiffs.

Further, PW-4 through the Log Book proved that the vehicle had been sent for repair to the plaintiffs. The defendants may have been adopting certain procedure of placing written order but, however, there is no bar in law in placing an oral order or entering into a verbal contract. No action has been taken against any of the employees for getting the vehicle repaired outside contrary to the established procedure. The defendants own employees testified that they handed over the vehicle for repair and after repair took the same back. The plaintiffs cannot be faulted for lack of compliance of any in house procedure adopted by the defendants who are duty bound to compensate the plaintiffs for the work done. The vehicle has been handed over by responsible functionaries i.e. the Junior Engineer and the Sub Divisional Officer.

The claim cannot be rejected on the ground that the name of the person is different in the plaint. It is not the defendants case that the witnesses have collided with the plaintiffs. The vehicle could have been got repaired due to emergent situation or circumstances.

From the statements of DW-1 & DW-2, it cannot be said that no vehicle can be sent for repair to a private workshop.

Keeping in view the overall facts and circumstances, I am of the considered view that the Courts below have correctly appreciated the evidence as well as material on record while

arriving at their conclusion. I see no reason to interfere with the same. The questions of law are answered accordingly. The appeal is accordingly dismissed.

October 8, 2007. **(Sanjay Karol)**
(rana) **Judge.**